

Draft as of 7/27/09

**LOCAL BANKRUPTCY RULES FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA**

(Revised\_\_\_\_\_ 2009) Cite as “WVSB LBR \_\_\_\_\_ - \_\_\_\_\_.”

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In addition to filing all lists, schedules, statements, and other documents required by the Bankruptcy Code and by the Federal Rules of Bankruptcy Procedures, at the time a voluntary bankruptcy petition is filed, a debtor must file the following:

a. Individual debtor –

An individual must file a signed *Notice To Individual Consumer Debtor Under §342(b) Of The Bankruptcy Code* (§342(b) Notice). If a married couple files a joint petition, each of the individuals must sign the §342(b) Notice. The §342(b) Notice shall provide the debtor with the information required by that section to be given to the debtor by the Clerk of Court. The debtor's signature upon the §342(b) Notice constitutes verification that the debtor has read the notice and understands the information provided.

An individual, who was self-employed, unemployed or did not receive pay advices or other evidence of payment within the sixty (60) days before filing of the petition, must complete, sign and file with the petition, the Court's Local Form "Statement Under Penalty of Perjury Concerning Payment Advices Due Pursuant to 11 U.S.C. Section 521(a)(1)(B)(iv)".

b. Corporate debtor -

A corporation must file the corporate resolution which authorized and consented to the filing of the bankruptcy petition on the corporation's behalf. A corporate debtor must also file a Corporate Ownership Statement.

c. Partnership debtor –

A partnership must file either a certificate stating the filing is authorized by the entity's partnership or operating agreement; or, a statement reflecting the consent of all general partners to the filing of bankruptcy by the partnership.

### **1007-1.1 Lists, Schedules and Statements – Extensions of Time**

Motions seeking an extension of time for filing schedules and statements are required to specifically state the grounds. The proposed order must provide that all schedules and statements shall be filed no later than ~~five (5) days~~ **seven (7) days** before the scheduled § 341 meeting.

### **1007-2 Mailing – List or Matrix**

A mailing matrix and Verification of Matrix must be filed with the petition in a voluntary case and within ~~fifteen (15) days~~ **fourteen (14) days** after the entry of the order for relief in an involuntary case. The mailing matrix is required to include the full names and addresses of all creditors and interested parties. The Verification of Matrix must verify that the matrix is accurate and complete to the best of the filer's knowledge, information and belief. For an electronically filed case, the filer must upload the names and addresses that appear on the mailing matrix to the database, and must also separately file the mailing matrix. For a paper filed case, the filer must submit the mailing matrix in electronic media form, unless the case is filed by a pro se individual, and must also separately file the paper mailing matrix.

The matrix also must include the taxing authority for each county where the debtor holds an interest in real estate. In a partnership case, the matrix is required include the names and addresses of all general and/or limited partners. In a Chapter 11 case, the matrix also must include the names and addresses of all equity security holders.

Errors that a debtor discovers on a mailing matrix must be promptly corrected. In the event that an amendment to the schedules adds a creditor or changes an address, the debtor is required file an amendment to the mailing matrix that reflects those additions or changes. In the event of a conversion of a case from one chapter to another, the debtor must file an amendment to the mailing matrix listing the names and addresses of any additional creditors or parties.

A debtor need not include the following on the mailing matrix:

1. Debtor(s)
2. Debtor's counsel

3. Trustee (if applicable)
4. United States Trustee, Region 4
5. United States Attorney's Office  
Southern District of West Virginia
6. Chief, Special Procedures Staff – (Chapter 11 cases only)  
Internal Revenue Service  
(At the address shown on the Register of Addresses of Governmental Units)
7. West Virginia State Department of Tax and Revenue  
(At the address shown on the Register of Addresses of Governmental Units)

**1007-3 Statement of Intention**

**1007-4 Financial Disclosure by Corporate Debtor**

**1007-5 Statement of SSN (Privacy)**

If there is a social security number mistake, the debtor is required to submit an amended verified statement (Official Form 21) with the correct full social security number to the clerk. The debtor also must provide notice of the correct number to all creditors, the United States Trustee, and the trustee and shall file a truncated or redacted copy of the notice, showing only the last four digits of the social security number, and a certificate of service with the court. If the mistake occurs in the last four digits that appear on the petition, the debtor also must file an amended petition.

**1007-5.1 Privacy Requirements**

Information available at the Clerk's offices or posted on the system must not be reviewed, obtained, or downloaded for uses inconsistent with the privacy requirements of federal law.

**1007-5.2 Motion to Limit Electronic Access**

Any person or entity may motion the Court for an order to limit electronic access to or to prohibit the electronic filing of specific materials or information if the material or information involves privacy interests and electronic access is likely to prejudice those privacy interests.

**1009-1 Amendments to Lists & Schedules**

Amendments filed must be accompanied by a certificate of service which reflects service of the amendment upon the trustee, and any named or affected entity. An amendment adding a creditor must be

accompanied by a certificate of service which reflects service of the following upon the trustee, and any named or affected entity:

- a. the amendment
- b. the *Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines*
- c. the order granting discharge (if any)
- d. any other document affecting the rights of the creditor.

**1010-1      Petition – Involuntary**

**1014-1      Transfer of Cases**

**1014-2      Venue - Change of Divisional Venue**

Divisional venue of a bankruptcy case will be in the division where the debtor maintains his/her residence or place of business. A motion filed with the petition requesting a change of divisional venue may be granted without entry of a written order. If the motion is filed after issuance of a *Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines*, it may be granted without notice and hearing by entry of a written order. If a written objection is filed, a hearing will be scheduled.

**1015-1      Joint Administration/Consolidation**

A party who desires to procedurally or substantively consolidate bankruptcy cases must file a written motion requesting consolidation.

(a)      Procedural consolidation

Procedural consolidation of cases is for administrative purposes only. Separate claims registers and mailing matrices will be maintained in each case. Proofs of claim shall be filed in each case in which the claim is applicable. All other filings shall be filed in the case designated by the Court as the lead case and shall reflect the style of the applicable case(s), but shall also reflect the consolidation by stating, in parentheses below the style of the case(s), "(Procedurally consolidated with Case No.(s) \_\_\_\_\_)".

(b)      Substantive consolidation

Substantive consolidation of cases results in the assets and liabilities of all the debtors being combined. At the time of consolidation, the Court will designate a lead case and the Clerk is authorized to close the remaining cases. All subsequent filings, including proofs of claim shall be docketed and filed only in the lead case, but shall contain the style of all the consolidated cases and state, in parentheses below the style of the cases, "(Substantively consolidated)". The Clerk shall combine and maintain in the lead case only, the claims registers and mailing matrices of all the consolidated cases.

**1015-2        Related Cases**

**1017-1        Conversion – Request for/Notice of**

**1017-2        Dismissal or Suspension – Case or Proceedings**

**Main Case Procedures –**

**(a)        Deficiency Notice –**

A deficiency notice will be issued for a case filed without all required documents; that does not conform with bankruptcy rules or administrative procedures; or, that includes documents not filed on official forms.

**(b)        Orders to Correct Deficiency –**

An order may be entered notifying the debtor or debtor's counsel of material deficiencies which impair the performance of the Clerk's duties and responsibilities, or of unpaid fees (unless the petition is accompanied by the debtor(s)'s Application to Pay Filing Fee in Installments, or in the case of an individual debtor Chapter 7 case, an (IFP) Application Requesting a Waiver). The order will specify the time limit for the debtor to correct the deficiency. In the event the debtor fails to timely respond, the Court may dismiss the case without further notice. Material deficiencies that may result in dismissal of a case include, but are not limited to:

1.        Failure to provide the debtor's full name and address;
2.        Failure to submit the debtor's Statement of Social Security Number (Form B21);
3.        Failure to file a mailing matrix or provide a list of all creditor names and addresses.

**Adversary Proceedings Procedures -**

Dismissal for Failure to Prosecute – In the event that no activity is taking place in an adversary proceeding, the Clerk is authorized to issue a ~~twenty (20) day~~ **twenty-one (21) day** notice informing the parties that the adversary proceeding may be dismissed for failure to prosecute. In the event a timely response is not filed the Court may enter an order dismissing the adversary proceeding.

**1017-2.1        Determination of Automatic Dismissal (Under §521(i))**

Any party seeking a determination on the issue of whether a case should be automatically dismissed due to a debtor's alleged failure to file all information required under §521(a)(1), must file a §521(i) Motion to Dismiss within seventy-five (75) days of the date the case is filed. Failure to timely file the §521(i) motion bars a party from later asserting that the matter was or should have been automatically dismissed.



## **1019-1 Conversion – Procedure Following**

### **1019-1.1 Conversion or Dismissal – Chapter 13 Disposition of Undistributed Funds**

When the case is either dismissed or converted, the Chapter 13 Trustee shall dispose of undistributed monies in the Trustee's custody as follows:

Confirmed Plan - The funds will be distributed to creditors in accordance with the confirmed plan without the necessity of the creditor filing a motion to lift stay in the Chapter 7 case;

Unconfirmed Plan - Unless a written objection is filed within ~~twenty (20) days~~ **twenty-one (21) days** of the notice of conversion or dismissal, the Trustee will pay all funds collected in accordance with § 1326 and any order of the Court. The Chapter 13 Trustee's final report accounting for the monies will be filed after final checks have cleared the Trustee's account.

## **1020-1 Chapter 11 Small Business Cases – General**

### **1070-1 Jurisdiction**

### **1071-1 Divisions – Bankruptcy Court**

For purposes of assigning case numbers and statistical reporting, as well as matters before the District Court, the Bankruptcy Court will observe the divisions established by the United States District Court for the Southern District of West Virginia.

### **1072-1 Venue and Places of Holding Court**

The Bankruptcy Court is not bound by the District Court's divisional delineations for purposes of determining the location of meetings of creditors, hearings, trials and other bankruptcy proceedings. As the Bankruptcy Court retains the right of case management, a case's bankruptcy divisional venue ordinarily will be determined by the county where the debtor maintains his/her residence or place of business. Adversary proceedings will be assigned case numbers and venue according to the division assigned to the related main bankruptcy case.

The Court will conduct hearings and other proceedings at each of the divisional locations, unless the Court determines hearings should be held elsewhere for the convenience of the parties in interest, or to accomplish compliance with the Bankruptcy Rules.

A case filed by or against an out-of-district debtor will be permitted to proceed in this district, unless an order is entered granting a timely filed motion or objection challenging venue. Failure to timely file the motion or objection shall constitute a waiver and bar a party from later raising the issue.

A listing of divisional assignments by county may be obtained from the Clerk's Office and will be available on the Court's website ([www.wvsc.uscourts.gov](http://www.wvsc.uscourts.gov)).

### **1073-1          Assignment of Cases**

The Judicial Conference of the United States in March, 1983, authorized concurrent State-wide jurisdiction for bankruptcy judges in the Northern and Southern Districts of West Virginia. By agreement between the Bankruptcy Judges of the Northern and Southern Districts of West Virginia, each judge may assign cases filed within his district to the judge of the other district as the press of business, workload or the interest of justice dictates. Unless otherwise ordered by the Court, pleadings will be filed and the case file maintained in the district where the case originated.

### **1074-1          Corporations**

## **PART II**

### **2002-1          Notice to Creditors & Other Interested Parties**

#### **2002-1.1      Notice - Preferred Creditor Address**

A *Notice of Preferred Creditor Address*, to be used in all cases pursuant to 11 U.S.C. § 342(f), must be filed directly with the agency that provides noticing services for the Bankruptcy Court. The filing will constitute the filing of the notice with the Court. To file a *Notice of Preferred Creditor Address* to be used in all cases, creditors are required to follow the instructions on the Court's website.

A *Notice of Exception to Preferred Creditor Address*, to be used in a specific case pursuant to 11 U.S.C. § 342(e), must be filed with the Clerk in that particular case, using the Local Form available from the Clerk's Office.

#### **2002-1.2      Notice to Debtor's Employer**

In an individual bankruptcy case, upon the filing of a written request that provides the name and address/fax number of the debtor's employer, an *Order And Notice Of Instruction To Employer(s) Regarding Wages*, will be entered in the case and mailed by the Clerk to the debtor, debtor's counsel, and the employer.

### **2002-2          Notice to United States or Federal Agency**

### **2002-3          United States as Creditor or Party**

### **2003-1          Meeting of Creditors & Equity Security Holders**

#### **(a)          Scheduling**

1. The United States Trustee is responsible for scheduling the date, time and place of the 11 U.S.C. § 341 meeting of creditors.

(b) Duty to Appear

1. A debtor who is an individual must appear in person at the §341 meeting of creditors. If the debtor is a partnership or corporation, a designated representative of the partnership or corporation must attend the § 341 meeting. When spouses file jointly, both debtors are required to be present at the § 341 meeting.

(c) Continuances

1. Continuances will be granted only under exceptional circumstances. A request for continuance should be directed to the trustee or, in a chapter 11 case to the United States Trustee. A motion for continuance filed with the Court will be denied unless the motion asserts that the request was unfairly denied by the trustee or United States Trustee.

2. If the debtor fails to appear at a meeting of creditors, the trustee may continue the meeting to the next docket or may move to dismiss the case.

3. If a trustee continues the meeting, the trustee will announce the continued date and time to all parties present at the initial meeting, and the debtor's attorney must give notice to all parties of the continued meeting. Debtor's counsel is required to file with the Court the notice and a certificate of service **within three (3) days** of service. If the debtor does not appear at a continued or rescheduled meeting, upon motion and notice by the trustee or United States Trustee, the case may be dismissed.

(d) Appearance for Meeting of Creditors

1. In rare cases, when extenuating circumstances prevent a debtor from appearing in person, the trustee or the United States Trustee may approve an alternative appearance for the debtor. Extenuating circumstances may include military service, serious medical condition, or incarceration. In those instances, a debtor's appearance at a § 341 meeting may be secured by alternative means, such as telephonically or by interrogatories. If the meeting is conducted by alternative appearance, the debtor must comply with all other rules regarding meetings of creditors.

2. Debtor's counsel should notify the trustee and United States Trustee in advance of any disability, such as hearing impairment or limited English proficiency, so that reasonable accommodation can be made.

(e) Waiver of Appearance

1. A debtor's duty to appear may be waived if the debtor is unable to appear and testify at a meeting of creditors in person or by alternative means because of incapacity, disability or active military duty in a combat zone.
2. If at least **ten (10) days** prior to the scheduled meeting, the debtor makes a written request supported with sufficient documentation of the incapacity, disability or active military duty, the United States Trustee may waive the debtor's appearance.
3. Without prior approval of the United States Trustee, a third party may not appear for the debtor pursuant to a power of attorney. If a debtor is unable to appear in person, the debtor should request an appearance by alternative means or a waiver of appearance.

(f) Individual Debtor's Duty to provide documentation

1. Personal Identification.

Every individual debtor must bring to the § 341 meeting of creditors:

- A. A picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.
- B. Evidence of social security number(s) or a written statement that such documentation does not exist. Acceptable forms of proof of social security number include: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.

2. Financial Information.

Every individual debtor must bring to the meeting of creditors the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

- A. Evidence of current income, such as the most recent payment advice, retirement and/or social security statement, disability statement, unemployment statement, etc.;
- B. Statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and

brokerage accounts for the time period that includes the date of the filing of the petition; and

C. Documentation of monthly expenses claimed by the debtor when required by § 707(b)(2)(A) or (B).

3. Tax Return.

At least **seven (7) days** before the first date set for the § 341 meeting of creditors, the debtor is required to file with the Clerk and also provide to the trustee a copy of the debtor's Federal income tax return, including attachments, for the most recent tax year ending immediately before the commencement of the case and for which a return was filed. In lieu of the tax return, the debtor may file and provide a transcript of the tax return or a written statement that the tax return does not exist.

4. Petition and Schedules.

If the petition and schedules have been filed electronically, the debtor must bring to the meeting and present to the trustee the petition and schedules bearing the actual signatures of the debtor.

5. Other Documents.

Prior to a § 341(a) meeting, the trustee can ask a debtor to provide documents to corroborate the information contained in the petition, statements, and schedules. The documents may include, but are not limited to: financial statements, loan documents, trust deeds, titles and insurance policies.

## **2004-1 Depositions & Examinations**

### **Rule 2004 Examinations -**

Prior to filing a motion for a Rule 2004 examination, a party seeking an examination is required to try to arrange a mutually agreeable time, place and date for the examination. If an agreement is reached, a party may schedule the Rule 2004 exam by filing and serving on the party a notice of the exam. If a motion is filed, the motion and proposed order must state the agreed time, place and date of the examination.

In the event the parties cannot agree on the terms of the examination, a motion must be filed which states that no agreement could be reached. The Court may grant the motion ex parte or may schedule the matter for a hearing.

A subpoena to appear at a Rule 2004 examination may be issued by the Clerk's office or by authorized counsel only after entry of an order granting the motion for Rule 2004 examination. A request

for the Clerk to issue a subpoena must be included in the motion for Rule 2004 examination and in the proposed order.

**2007.1-1      Trustees & Examiners (Ch. 11)**

**2010-1      Trustees – Bonds/Surety**

**2014-1      Employment of Professionals**

1.      Duty to Disclose Additional Material Information

A professional employed or to be employed is required to promptly file and serve a supplemental affidavit, after learning of any additional material information relating to the employment (such as potential or actual conflicts of interest).

2.      Appraisers, Auctioneers, Brokers, and Real Estate Agents

The affidavit or verified statement of an appraiser, auctioneer, broker, or real estate agent also must contain the following:

A.      A statement disclosing whether the professional is an officer or employee of the Judicial Branch of the United States, or in the United States Department of Justice;

B.      A statement that the professional will turn over gross proceeds of any sale conducted, to the trustee or debtor in possession unless otherwise ordered by the Court; and

C.      An acknowledgment that the professional will not purchase or acquire any interest in any of the property being appraised by or sold by that professional.

**2015-1      Trustees – General**

**2015-2      Debtor-In-Possession Duties**

Every quarter after a Chapter 11 plan has been confirmed, the debtor in possession or trustee is required to file a Post Confirmation Quarterly Report in a format approved by the United States Trustee. Upon motion of the United States Trustee, debtor in possession or other party in interest, the Court may close the case or grant other relief.

**2015-3      Trustees – Reports & Disposition of Records**

**2015-4      Trustees – Chapter 12**

**2015-5      Trustees – Chapter 13**

The Chapter 13 Trustee will receive from the plan payments those expenses and compensation provided by the Executive Office of the U.S. Trustee. The Chapter 13 trustee is authorized to charge the percentage fee authorized for trustee compensation and expenses on any unconfirmed case where the trustee is authorized to make disbursements before confirmation. On a case by case basis and upon an appropriate application showing extraordinary circumstances, pursuant to 11 U.S.C. § 503, the Court may order additional administrative compensation.

#### **2016-1 Compensation of Professionals**

Unless otherwise ordered by the Court, professionals (including, but not limited to attorneys, accountants, examiners, investment bankers, financial advisors, or real estate advisors), seeking compensation and/or reimbursement for expenses, pursuant to 11 U.S.C. §§ 327, 328, 330, and/or 331, must file applications that substantially comply with the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330.

In all chapters, fee applications for attorneys' fees and expenses incurred up to the date of conversion or the effective date of a plan must be filed with the Court within ~~twenty (20) days~~ **twenty-one (21) days** after notice of conversion or dismissal or an order approving a plan of reorganization.

A request for payment for post-petition services rendered should not be submitted to the debtor until an application for compensation has been approved by the court.

Attorneys - Chapter 13 Attorney Fees -

The Court has determined that attorneys may receive a flat fee plus four percent (4%) of plan payments as reasonable compensation for legal services to Debtors in Chapter 13 cases. Debtor's counsel seeking additional compensation must file a written fee application.

#### **2019-1 Representation of Multiple Parties**

#### **2020-1 United States Trustees**

#### **2070-1 Estate Administration**

#### **2071-1 Committees**

#### **2072-1 Notice to Other Courts**

- (a) The debtor or other party filing a bankruptcy case must promptly send notice of the bankruptcy filing to the following persons:
  - 1. The clerk of any court where the debtor is a party to a pending civil action and all parties of record;

2. Any judge specifically assigned to a pending civil action in which the debtor is a party;
  3. Any arbitrator or arbitration panel, as applicable, if the debtor is a party to an arbitration proceeding.
  4. All parties and counsel involved in any such action.
- (b) If an action is commenced against the debtor subsequent to the entry of the order for relief, the debtor shall give written notice to the court or tribunal and to all parties and counsel involved of the filing of the bankruptcy petition.

**2080-1 Chapter 9**

**2081-1 Chapter 11 – General**

**2082-1 Chapter 12 – General**

**2083-1 Chapter 13 - General**

**2083-1.1 Chapter 13 – Procedure for Purchase of a Vehicle**

**Low Cost Vehicle Without Incurring Debt**

A Chapter 13 Debtor may purchase a low cost vehicle, without entry of an order by Court, if the Debtor finds it necessary to quickly obtain a replacement vehicle to avoid loss of employment or other problems which may adversely impact the Debtor's ability to perform under a Chapter 13 Plan. The purchase must not require the Debtor to obtain credit or incur debt. In addition, a stipulation between the Debtor and Chapter 13 Trustee must be filed that sets forth adequate information describing the vehicle, the purchase price, the source of funds to be used, and the status of the Chapter 13 Plan payments.

**Any Vehicle Incurring Debt**

\*\*\*\*\*ADD LANGUAGE AND MAKE REFERENCE TO THE FORM\*\*\*\*\* (Helen will send a final form to be added to Local Forms)

**2090-1 Attorneys - Admission to Practice**

**Admitted Attorneys**

Attorneys admitted to practice in the United States District Court for the Southern District of West Virginia are automatically admitted to practice before this Court.

**Non-Admitted Attorneys**



An attorney, not admitted to practice before the U. S. District Court for the Southern District of West Virginia, must associate with local counsel admitted to practice before the Court. Local counsel must endorse all pleadings filed and must accompany non-admitted counsel in appearances before the Court. Pleadings filed by a non-admitted attorney that are not endorsed by local counsel, are subject to be stricken from the docket by the Court. Before a pleading is stricken, the Clerk will mail a notice of deficiency allowing ~~fifteen (15) days~~ **fourteen (14) days** to correct the deficiency.

#### Admission of Visiting Attorneys (Pro Hac Vice)

##### (a) Procedure for admission

Any person who has not been admitted to practice before the U.S. District Court for the Southern District of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, will be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney. The Sponsoring Attorney must be a admitted to practice before the U.S. District Court for the Southern District of West Virginia, have an office for the practice of law in West Virginia, and practice law primarily in West Virginia. At or before his or her initial appearance (including signing a pleading), the Visiting Attorney must file with the clerk, the Statement of Visiting Attorney approved by the Court, which is available from the Clerk and on the Court's web site, and must pay the Visiting Attorney fee. The Statement is required to designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney must consent to the designation and must thereafter sign all papers that require the signature of an attorney. Any paper filed by a Visiting Attorney that does not comply with this rule may be stricken from the docket by the Court. Before a pleading is stricken, the Clerk will mail a notice of deficiency giving ~~fifteen (15) days~~ **fourteen (14) days** to correct the deficiency. Upon compliance with this rule and after the Sponsoring Attorney introduced the Visiting Attorney to the Court, the Sponsoring Attorney may be excused by the Court from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case. As admission is granted only on a case-by-case basis, the grant of admission of a Visiting Attorney in a particular case does not grant permission for the Visiting Attorney to appear in a different case.

##### (b) Motion not required

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

##### (c) Payment of visiting attorney fee

###### (1) Fee payable to clerk.

The court will charge a Visiting Attorney fee, payable to the Clerk, United States Bankruptcy Court, in an amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used only for “purposes which inure to the benefit of the members of the bench and the bar in the administration of justice.” Other than library materials, the fees will not be used to supplement appropriated funds and will not be used to pay for materials or supplies available from statutory appropriations. The fees will be placed in a fund administered by the clerk as custodian of the fund. Disbursements will be made only at the direction of a committee, the members of which will be appointed by the Chief Bankruptcy Judge, in accordance with a written plan.

(2) West Virginia State Bar pro hac vice fee

The pro hac vice fee imposed by the Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid to The West Virginia State Bar and is not payable to the clerk of the district court.

(d) Exceptions to payment of visiting attorney fee

(1) Federal government attorneys.

Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.

(2) Law Students.

Law students who participate in a case under the guidance of and in association with an attorney admitted to practice before the Court, will not be charged a Visiting Attorney fee.

(e) Waiver of payment of visiting attorney fee

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case and should be filed within ~~20 days~~ **twenty-one (21) days** of the date that the Statement of Visiting Attorney is filed. An example of a case in which waiver may be appropriate is where an attorney pro bono represents an indigent party. If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee as ordered.

(f) Revocation of visiting attorney privilege

For good cause shown, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

Representation of Indigent Parties - Appointment of Counsel –

The Court and Bankruptcy Bar recognize the responsibility and duty of lawyers engaged in practice to provide public interest legal services without a fee or at a reduced fee to indigent persons, those with low income or persons of limited resources. While counsel's voluntary fulfillment of this responsibility by counsel is encouraged, the Court and the Bar recognize the Court's authority to appoint all lawyers who appear and practice before it to provide professional services at no fee or a reduced fee to persons of limited means. The Court from time to time, in the furtherance of justice and of these responsibilities and duties, may exercise this authority by appointing attorneys to counsel, and/or represent parties in matters before the Court.

**Note: The AO has issued notice of the redesign of Chapter 13 Volume 12 (Attorney Admission Fees). The last revision is dated 7/20/09.**

## **2090-2 Attorneys – Discipline & Disbarment**

### **2091-1 Attorneys – Withdrawal/ Substitution**

#### **Duty to Represent –**

An attorney who represents a party in a bankruptcy case shall remain the responsible attorney of record for all purposes including the representation of the party in all matters in the case until the case is closed or the attorney is relieved of representation by court order.

#### **Termination of Representation -**

An attorney who has entered an appearance in any civil action shall not withdraw the appearance or have it stricken from the record, except by order.

#### **Withdrawal -**

An attorney who has made an appearance in a case may not withdraw the appearance nor have it stricken from the record, except by order. An attorney desiring to withdraw from representation of a party in this Court must file a written motion which states the grounds for withdraw. The motion must comply with the West Virginia Rules of Professional Conduct. Approval rests in the sound discretion of the Court, but will not be granted until the attorney seeking to withdraw has made reasonable effort to give actual notice to the client that:

- (1) the attorney wishes to withdraw;
- (2) the court retains jurisdiction;
- (3) the client has the burden of keeping the court informed where notice, pleadings, or other papers may be served;
- (4) the client has the obligation of preparing for trial or hire other counsel to prepare for trial when the trial date has been set;

- (5) if the client fails or refuses to meet these burdens, the client may suffer possible default;
- (6) the dates of any proceedings, including trial, and the holding of any such proceedings will not be affected by the withdrawal of any counsel;
- (7) service of process may be made upon the client at the client's last known address; and
- (8) the client has the right to object immediately to attorney's intent to withdraw.

A motion to withdraw must be accompanied by the attorney's written certification that the above notification requirements have been met, the manner by which such notification was given, and setting forth the client's last known address and telephone number. Before the Court permits an attorney to withdraw, counsel must notify the client of the effective date of the withdrawal. Following effective withdrawal all pleadings, notices, or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

#### Substitution –

An attorney of record may file a notice of substitution of counsel. The notice of substitution must be signed by both attorneys.

### **PART III**

#### **3001-1 Claims and Equity Security Interests – General**

##### Filing Proof of Claim or Interest

- a. A proof of claim filed before the conversion of any case is deemed filed in the converted case. Any claimant who did not file a proof of claim in a Chapter 9 or Chapter 11 case because the claim was correctly scheduled must file a proof of claim in the converted case.
- b. In Chapter 7 cases, deadlines will not be set for filing proofs of claim unless the trustee requests that the court issue a notice to creditors to file claims.
- c. In Chapter 11 cases, unless otherwise ordered by the court, the deadline for an entity other than a governmental unit to file a proof of claim (if required to be filed) will be ninety (90) days after the date first set for the meeting of creditors under 11 U.S.C. § 341(a). The deadline for a governmental unit to file a proof of claim, unless otherwise ordered by the court, will be one hundred and eighty (180) days after the date of the order for relief.

##### Copies

- 1. If a claim is not filed electronically only the original of a proof of claim is required to be filed with the Clerk.

2. Any request for a time stamped copy of the proof of claim and/or an electronically generated notice of filing must include an additional copy of the proof of claim and a self-addressed, postage pre-paid envelope.

Address of the Claimant

Creditors and other interested parties, who file a proof of claim or other request that provides the Clerk with a mailing address must notify the Clerk of any change in address.

**3006-1            Claims – Withdrawal**

**3007-1            Claims – Objections**

All objections to claims must specify the basis for the relief sought. The court may *sua sponte* deny an objection to a proof of claim when the objection fails to state grounds for disallowance.

**3008-1            Claims – Reconsideration**

**3009-1            Dividends – Chapter 7**

**3010-1            Dividends – Small**

Chapter 7 Cases –

In a Chapter 7 case, the Trustee is authorized, in the Trustee's sole discretion, to distribute dividends in amounts less than five dollars (\$5.00), or to treat the dividends as §347 Unclaimed Property.

Chapter 12 and Chapter 13 Cases –

In a Chapter 12 or a Chapter 13 case, the Trustee is authorized, in the Trustee's sole discretion, to distribute payments in amounts less than fifteen dollars (\$15.00).

**3011-1            Unclaimed Funds**

The Unclaimed Funds Registry is available to the public by contacting the Bankruptcy Court Clerk's Office.

Procedure for Unclaimed Funds -

(A)    Deposit of Unclaimed Funds.

All unclaimed funds collected by the Court will be immediately deposited into the United States Treasury and not into the registry of the Court.

(B) Requests for Return of Unclaimed Funds.

(1) Requirements for Pro Se Creditor/Claimant - Self Representation

A request for return of an unclaimed dividend must be made by written motion. The creditor/claimant must sign a certificate of mailing reflecting service of the motion on the debtor, debtor's counsel, and United States Attorney for the Southern District of West Virginia, pursuant to 28 U.S.C. §2042. (The United States Trustee will be served via the Court's electronic filing system.) The motion must state:

- (a) The name, address, telephone number and a brief history of the creditor/claimant from the date of filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution);
- (b) Whether the claim has been assigned to the creditor, and if so, copies of all documents evidencing the assignment must be appended to the motion;
- (c) Whether or not the creditor/claimant believes that any other party may be entitled to the funds.

If the claimant is a debtor in the case, a motion for return of unclaimed funds made by an attorney, representative or agent, including by use of a power of attorney, on the debtor's behalf, must provide the details of contractual agreements between the debtor and attorney, representative or agent, and the amount of compensation to be paid/received by the attorney, representative or agent. The motion must provide copies of those documents.

The motion must contain a certificate of a notary public, with the notary's seal, and statement that the notary has examined the motion and documents presented by the creditor/claimant establishing identity.

If the creditor/claimant is a corporation, it must be represented by a member of the bar of this Court. In addition, if the creditor/claimant is a successor corporation, the creditor/claimant is required to provide documentation establishing the chain of ownership of the original corporate claimant as proof of entitlement to the claim.

(2) Requirements for the Representative of the Estate of a Deceased Claimant.

The representative of the estate of a deceased claimant must comply with all requirements in paragraph (1) above. Certified copies of all probate documents

substantiating the right to act on behalf of the decedent's estate must be provided as proof of entitlement.

(3) Requirements for any other entity representing the interest of a creditor/claimant.

If a representative is a corporation, it must be represented by counsel in accordance with these local rules. The representative must file a motion with the Court for an order authorizing return of an unclaimed dividend pursuant to FRBP 9013. The representative must comply with all of the requirements of paragraph (1) above.

If a representative asserts authority to represent the interests of a creditor/claimant as the result of a power of attorney, an original of the power of attorney must be filed with the motion.

(4) All motions must also be filed with a notice that substantially complies with Official Form 20A, and with a proposed order. The notice shall allow ~~twenty (20) days~~ **notice twenty-one (21) days** for written responses objecting to the requested relief **to be filed** and must contain the "NOTICE" language reflecting that the motion was served on the United States Attorney for the Southern District of West Virginia, on the debtor and on the debtor's counsel. (The United States Trustee will be served via the Court's electronic filing system.)

If a hearing is not scheduled and if no objections are filed, ~~twenty (20) days~~ **twenty-one (21) days** after all required documentation is filed, the Clerk will prepare an appropriate order for the Court. Any payment made to a claimant represented by counsel will be issued jointly to the claimant and attorney and will be mailed to the claimant's counsel.

### **3012-1 Valuation of Collateral**

A motion to value a secured claim pursuant to §506 must contain a statement of the collateral's estimated value. Motions filed without a statement of the collateral's estimated value may be denied for failing to state a claim upon which relief can be granted.

#### **Motor Vehicles -**

The presumptive replacement valuation standard for a motor vehicle is the average between the N.A.D.A. trade-in and retail value for the particular year, make, and model. The presumptive value is subject to rebuttal.

Note: Judge Pearson – Important to obtain the Bar's views on this proposed provision

### **3015-1 Chapter 13 – Plan**

Any Chapter 13 plan, including amended plans, must substantially conform to this District's model plan, as amended from time to time. The model plan is available from the Clerk's office or on the Court's website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)).

#### Pre-Confirmation Payments –

The Chapter 13 Trustee is authorized, within **thirty (30) days** of the filing of the plan and commencement of plan payments, to make payments to secured creditors and lessors (as specified in § 1326(a)(1)(B) and (C)) designated by the debtor to receive monthly payments under the plan. Each payment disbursed will be in an amount equal to that specified within the plan narrative and will continue until such time as the plan is confirmed, the payment is otherwise modified and/or the value of collateral securing the claim is determined. The Chapter 13 Trustee may include, in calculating the trustee's expenses, payments to secured creditors and lessors made pursuant to this rule. The Trustee is not obligated to make any pre-confirmation payment unless a creditor files a proof of claim.

#### Chapter 13 – Payments Where Arrearage Is Owed On Secured Debt -

If a Chapter 13 debtor is not in arrears on a secured debt payment at the time of filing, then in the debtor's discretion, the debtor may continue to be the disbursing agent on the claim and pay the secured creditor directly.

If a Chapter 13 debtor seeks to cure a pre-petition arrearage on a secured debt, including long term secured debt, payments on the pre-petition arrearage and payments on the secured debt will be made by the Chapter 13 Trustee unless the Court enters an order granting the debtor's motion establishing good cause why the Chapter 13 Trustee should not be the disbursing agent.

A Chapter 13 debtor, who was not in arrears on a secured debt payment at the time of filing or was granted the right to be the disbursing agent, but subsequently falls behind on the secured debt payment, loses the right to be the disbursing agent on the secured debt. Provided an agreed order or stipulation is filed, both the post-petition cure and the ongoing secured debt payments will be made by the Chapter 13 Trustee without the need to modify the terms of the confirmed Plan. Upon a showing of good cause, the Court may grant a debtor's motion to continue as the disbursing agent.

**Note:** The UST had a question about the meaning of "long term debt" which is supposed to be debt that extends beyond the end of the plan.

**Note:** Judge Pearson – This section may need to be reconsidered in light of H.R. 1106 (Mortgage relief) legislation if passed or if the Court needs to reduce hardship on debtors to retain homes which seem hindered by the requirement that all Chapter 13 payments be subject to the full Chapter 13 commission.

#### **3015-1.1 Chapter 13 - Objections to Plan and/or Valuation of Secured Property**

Except for objections filed by the Chapter 13 Trustee, all objections to confirmation of a plan and/or to valuation of secured property must be filed by the date set forth in a notice issued by the



Court. The Court may sustain a Trustee's objection without hearing; but all other objections will be considered at the confirmation hearing. All objections must be in writing and must specifically state the grounds for the objection.

### **3015-1.2 Chapter 13 – Plan Payments to Trustee**

#### **Debtor's Responsibility -**

Payments to the Chapter 13 Trustee shall commence **within thirty (30) days** of the filing of the Chapter 13 petition. A debtor is required to make plan payments directly to the Trustee until the debtor's employer commences wage withholding. Notwithstanding the entry of a wage withholding order, it is also the responsibility of the debtor to ensure that all monthly plan payments are made. If a debtor sends a personal check to the Trustee that is returned for insufficient funds, the Trustee is authorized to require the debtor to make all future payments by cashier's check or money order.

#### **Wage Withholding -**

When the Chapter 13 plan is filed and the debtor is employed, the Court will enter an order directing the debtor's employer to withhold from the debtor's wages an amount equal to the proposed payments under the debtor's plan. In a joint case, the wage withholding order will be directed to the employer of the debtor with the higher net pay. If the debtor has specific wage withholding needs, requirements or exceptions to these procedures, a proposed wage withholding order should be submitted with the Chapter 13 plan.

In the event that a debtor files an amended plan that changes a plan payment from that proposed in the earlier plan, the debtor is responsible for submitting a new wage withholding order. If the plan payment proposed by the debtor is altered by confirmation of the plan, the Chapter 13 trustee shall submit a new wage withholding order.

#### **Direct Payments -**

A debtor may file a motion to make plan payments directly to the Trustee. The motion must be filed with the Chapter 13 Plan and must state why direct payment is in the best interests of the debtor, the creditors or the Trustee. An order requiring the debtor to make plan payments directly to the Trustee may be entered without the filing of a motion if the debtor's income is not derived from an employer (e.g., social security, pension/retirement, unemployment or self-employment).

#### **Moratorium on Plan Payments –**

A motion for moratorium of plan payments must state the length of time payments would be suspended, the necessity for the moratorium and must specify all secured creditors affected by the moratorium. If the Court grants a moratorium on payments and if the debtor is subject to a wage withholding order, the debtor is responsible to cause the employer to stop the wage withholding for the moratorium period. It is also the debtor's responsibility to ensure that plan payments recommence on

time at the end of the moratorium period. Any funds remitted to the Chapter 13 trustee, despite a court ordered suspension, are subject to being disbursed by the trustee.

An order granting the suspension of plan payments does not eliminate those payments; rather, it adds the payments onto the end of the plan. Interest shall continue to accrue on secured debt during the moratorium period. The Court may order the suspension of plan payments without the need for a debtor to file an amended plan, or to file motion to modify a plan after confirmation.

### **3015-2 Chapter 13 – Amendments to Plans**

#### **Amendment of unconfirmed plans –**

Amendments to unconfirmed plans must substantially conform to the Court’s Model Chapter 13 Plan. The Clerk will send a copy of the amended plan and notice of the confirmation hearing to all creditors and parties in interest.

An amended plan must address all previously entered orders that affect the treatment of secured creditors. If an amended plan proposes treatment of a secured creditor that differs from treatment provided in a previously entered order, the Trustee will accrue funds pending further order of the Court.

#### **Modification of Confirmed Plans/Motion to modify confirmed plans –**

Modification of a confirmed plan must be by motion. A motion to modify a confirmed plan must include, as applicable, the following information:

1. The date that the original plan was confirmed, and the date of any subsequent modifications.
2. The reasons why a plan modification is sought, including all substantial and unanticipated changes in circumstances that occurred since entry of the confirmation order.
3. The provisions of the confirmed plan that are being modified, and the approximate number of months needed to complete the plan as modified.
4. The extent to which the proposed modification affects the rights of creditors or other parties in interest.
5. Amended Schedules I & J, if the motion to modify proposes to change the amount of plan payments.
6. A statement explaining why the proposed modification is in the best interest of creditors.

Motions to modify will be scheduled for hearing on notice to all creditors. Relief may be granted without hearing if the Chapter 13 Trustee and any affected secured creditor(s) have endorsed a proposed order granting a Motion to Modify a Confirmed Plan and the motion does not affect payout to unsecured creditors.

Payments under the confirmed plan must continue until a ruling is made on the motion to modify. If the motion is granted and wage withholding order is in effect, debtor's counsel must submit an amended wage withholding order changing the amount necessary for the payment of the modified plan.

#### Cure of Defaults Pre-Confirmation or Post-Confirmation -

##### Post-petition, Pre-confirmation Defaults

A debtor is not required to file an amended plan if a creditor agrees to allow the debtor to cure a post-petition, pre-confirmation arrearage through the Chapter 13 trustee. An agreed order resolving the delinquency must include the exact amount of the post-petition, pre-confirmation arrearage, and the exact amount of the on-going payment, and the address where the payments are to be sent, and must be sent to the Chapter 13 Trustee for signature. The Chapter 13 Trustee will include the agreement and the increased payment amount to the creditor in the confirmation order. No amended proof of claim need be filed.

##### Post-Confirmation Defaults

A debtor is not required to file a motion to modify a confirmed plan if a creditor agrees to allow the debtor to cure a post-confirmation arrearage through the Chapter 13 trustee, provided the distribution to unsecured creditors is not reduced. An agreed order resolving the delinquency must be sent to the Chapter 13 Trustee for signature. The order is required to include the exact amount of the post-confirmation arrearage, the exact amount of the on-going payment, and the address where the payments are to be sent. No amended proof of claim need be filed.

### **3015-3 Chapter 13 – Confirmation**

#### Trustee's Recommendation on Confirmation and Valuation of Secured Property

The Trustee will review all plans and schedules and promptly raise any necessary objections. The Trustee's recommendation on confirmation of the plan and valuation of secured property will be filed and served on the debtor and debtor's counsel prior to the confirmation hearing.

#### Confirmation Hearing

If no objection to confirmation is pending, but the trustee is not in a position to recommend or oppose confirmation (e.g., due to uncertainty of the cash flow of the plan resulting from pending claims bar dates), the trustee may, at least one (1) week in advance of the scheduled confirmation hearing, file a motion to continue the confirmation hearing to a date after the expiration of the bar date for non-governmental claims.

In the event that plan payments to the trustee are current and the debtor files a *Certification by Debtor(s) of Compliance with Requirements of 11 U.S.C. Sections 1322 and 1325*, which reflects that the requirements have been met, and there are no unresolved issues regarding confirmation, the Trustee may, one (1) week in advance of the scheduled final confirmation hearing, recommend the waiver of the final confirmation hearing and submit a proposed confirmation order. If no objection to the waiver is filed, the Court may waive the continued confirmation hearing and enter the proposed confirmation order.

In the event that objections to confirmation remain outstanding or another issue, such as the status of domestic support obligations, is unresolved the Court will conduct the final confirmation hearing.

#### Continuing the Confirmation Hearing on the Filing of an Amended Plan –

In the event that the debtor files an amended plan, the Clerk may continue any previously set confirmation hearing date to allow proper notice to parties in interest pursuant to Fed. R. Bankr. P. 2002(b). Absent the Clerk's issuance of a Notice of Amended Plan that reschedules the confirmation hearing, parties must appear at the previously scheduled confirmation hearing.

#### Effect on Previously Filed Plans and Objections to Confirmation of Plan –

Once an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn and all previously filed objections are deemed moot. Until approval of the amended plan, a debtor must continue to make plan payments as provided in the most recent prior plan.

- 3016-1 Chapter 11 – Plan**
- 3016-2 Disclosure Statement - General**
- 3017-1 Disclosure Statement – Approval**
- 3017-2 Disclosure Statement – Small Business Cases**
- 3018-1 Ballots –Voting on Plans**

(a) Ballots on plans must instruct the parties entitled to vote to submit their completed ballots directly to counsel for the plan proponent.

(b) Unless otherwise ordered by the Court, counsel for the plan proponent must tabulate the ballots, by class, and file a report of ballots with the Clerk at least ~~three (3) working days~~ **seven (7)**

days before the confirmation hearing. The report of ballots must include certification that the ballots received have not been modified and have been properly accounted for in the tabulation.

(c) The original ballots must be maintained by counsel for the plan proponent for a period of at least seven (7) years after the closing of the case. Upon Order of the Court, counsel for the plan proponent must make the original ballots available for inspection.

**3018-2            Acceptance/Rejection of Plans**

**3019-1            Chapter 11 – Amendments to Plans**

**3020-1            Chapter 11 – Confirmation**

**Post Confirmation Reports-**

After entry of the confirmation order, the reorganized debtor in possession or trustee must file quarterly reports, in a format approved by the Office of United States Trustee. The report must include an estimate of the time frame until a final report and/or motion for a final decree will be filed. The report must be served on any disbursing agent, debtor, debtor's counsel, trustee, United States Trustee, and any party who requested notice.

**3021-1            Dividends – Under Plan (Ch. 11)**

**3022-1            Final Report/Decree (Ch. 11)**

Upon the filing of a final report and/or a motion for a final decree, after an estate is fully administered, the Court may close a case. All outstanding fees and charges owed to the Clerk must be paid before a final decree will be entered.

**3070-1            Chapter 13 – Payments**

**PART IV**

**4001-1            Automatic Stay – Relief From**

A motion for relief from the automatic stay imposed by 11 U.S.C. § 362(a), must be served by the movant on the debtor, the debtor's attorney, the trustee, and any other party affected by the relief sought. A motion must state the amount owed on the obligation, the amount of arrearage and the estimated value of the property. The motion must include by narrative or attachment the following:

- (i) Specific details in a clear and understandable format of the payment history of the loan in question and how those payments have been applied. The payment history shall be through the present date and shall begin from the date of the default upon which the motion is based. This accounting must include a clear and understandable itemization of all charges of any kind or nature; and the date of and changes to the interest rate during the payment history.

- (ii) A copy of the security perfection instrument, and if recorded the book and page numbers.
- (iii) The most current information available to the movant as to the value of its collateral and the methodology used to determine such value.

Where a motion for stay relief is filed with an agreed order, signed by all parties, or by their counsel, the above information need not be included.

If a motion fails to provide the required information and documentation, an order may be entered denying the relief requested or directing the movant to correct the deficiency. A party directed to correct a deficiency must file and serve the information upon all parties who were served with the original motion. If the deficiency is not corrected or an exception is not sought, the motion for stay relief may be denied without a hearing. All time periods under 11 U.S.C. § 362(e) will be tolled or stayed until a deficiency is corrected.

Motions filed with complete information may be scheduled for preliminary hearing. The Clerk's Office will issue a notice scheduling the preliminary hearing. Counsel for the movant and any other party with an objection or response to the motion must appear at the preliminary hearing and be prepared to make their representations and legal arguments. Parties will not be required to produce fact or expert evidence or testimony at the preliminary hearing unless the Court directs otherwise. In advance of the preliminary hearing, counsel for the parties must confer for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating to relevant facts, such as the value of the property and the extent and validity of the security interest. The Court may enter an order granting the requested relief if the debtor or debtor's counsel fails to appear at the preliminary hearing.

If the Court determines that a final hearing is necessary, the movant will prepare and submit an order scheduling the final hearing. Upon entry, this order will be mailed only to affected parties and to those who appeared at the preliminary hearing. ~~Five (5) days~~ **Seven (7) days** before a final hearing, the parties shall file any stipulations and file and exchange witness and exhibit lists.

In the event the Court directs negotiations between the parties, counsel for the movant must verify that s/he has access to the name, office, position and telephone number of an individual or officer of the lender who has authority to discuss resolution and terms that may permit settlement of the motion for stay relief and/or cure of the default. This person must be knowledgeable of payment changes that can occur with interest rate adjustments.

Chapter 7 Cases:

Personal Property and Non-Residential Real Property

Motions may be filed in accordance with the Local Rule 9013-1 for default practice.

## Residential Real Property

Motions involving the debtor's residence will be scheduled for preliminary hearing, unless the debtor's Statement of Intention indicates that the residential real property is to be surrendered. Where the debtor has indicated that the residence will be surrendered, a motion for stay relief need only assert the debtor's intention to surrender, the value of the collateral, and the total unpaid claim, and may be filed in accordance with the Local Rule 9013-1 for default practice.

If a Statement of Intention has not been filed or does not list the residential property, the motion will be scheduled for preliminary hearing. The debtor must appear at the hearing in person, and by counsel, to inform the Court and the movant of the intent with regard to the property. Absent personal appearance by the debtor and counsel, the motion may be granted by default.

## Chapters 11, 12 and 13:

All Motions for Relief from the Automatic Stay filed will be scheduled for preliminary hearing, unless accompanied by an agreed order.

## Relief from Stay Granted –

### Trustee Authorization - Chapter 13 Plan Payments

The trustee is authorized to cease making further payments on the secured claim upon entry of an order granting relief from the automatic stay, except that adequate protection payments to which the creditor was entitled prior to entry of the order will be distributed pursuant to the plan.

### Duty - Action Following Foreclosure

A party who obtains relief from the automatic stay, after foreclosing upon property, must file and provide a copy of the Report of Sale to the debtor, debtor's counsel, the Trustee, and any other affected party.

## Automatic Stay - Relief from Stay Not Needed

### Periodic Statement of Account

A periodic statement of account (also commonly known as payment coupons or payment books) sent by a secured creditor in the ordinary course of business to a debtor in a pending case shall not be deemed a violation of the automatic stay. The statement may include a coupon or book for the debtor's use in making the periodic payment(s) on the account.

However, upon a debtor's written motion, the Court will enter an Order without notice or hearing, allowing a creditor to mail directly to the debtor periodic statements of account without violating the automatic stay provisions of §362.

**4001-2          Cash Collateral**

**4001-3          Obtaining Credit**

**4002-1          Debtor – Duties**

All Debtors

A debtor must grant a secured creditor's reasonable request to inspect collateral.

Until a case is closed, the debtor must notify the Clerk in writing of any change in the debtor's address.

Debtors Without Attorneys (*Pro Se*)

A debtor who is not represented by an attorney (referred to as *pro se*) has the same duty to comply with these rules as that of an attorney employed to represent a debtor.

Until a case is closed, a pro se debtor must notify the Clerk in writing of any change in the debtor's address and telephone number.

Pro se parties must sign paper originals of all documents filed.

Cross Reference

See also LR 2003-1 for additional duties

**4002-1.1          Procedure for Processing Rental Payments**

When it is required that a debtor submit rent payments to the Clerk for transmittal to a lessor, the following procedure will apply:

- (a) The debtor must complete the portion of the petition entitled, Certification by a Debtor Who Resides as a Tenant of Residential Property. In addition, the debtor must file a Certificate of Intent to Cure Default in Rent Payments, which includes the landlord's name, address, telephone number and if known, the name and address of the landlord's counsel. The Certificate must be filed with: i) a copy of the judgment for possession resulting from the eviction action; and ii) payment of the rent that would accrue during the **thirty (30) day period** after the petition is filed. The payment must be in the form of cash, certified check or money order made payable to the United States Bankruptcy



Court. The Certificate of Intent to Cure Default in Rent Payments must be filed contemporaneously with the bankruptcy petition, or in the event of a petition filed electronically, no more than ~~five (5) days~~ **seven (7) days** after the petition is filed;

- (b) Upon receipt, the rental payment will be deposited in the Clerk's Treasury Account;
- (c) Notice of filing of Certificate of Intent to Cure Default in Rent Payments and receipt of the payment will be forwarded by the Clerk to the lessor named by the debtor in the Certificate, giving the lessor **fifteen (15) days** to file a written objection. Unless the lessor files a timely written objection, the Court will enter an Order directing payment of the funds to the lessor;
- (d) A debtor who subsequently files a Certificate of Cure of Residential Judgment must include the amount paid to cure the entire monetary default. The debtor must serve the Certificate of Cure of Residential Judgment on the lessor along with a notice giving the lessor **fifteen (15) days** to file a written objection;
- (e) If a lessor files a timely written objection to any certification, a hearing will be held **within ten (10) days** to consider the objection.

#### **4002-2 Address of Debtor**

#### **4003-1 Exemptions**

#### **4003-2 Lien Avoidance**

A motion to avoid a lien under 11 U.S.C. § 522(f) must include a notice which states that if no response is filed within ~~twenty (20) days~~, **twenty-one (21) days**, the Court may grant the motion without hearing. The motion must substantially conform to the Court's local form. The motion, notice and a proposed order must be served upon the lien holder, the Trustee and the U.S. Trustee. If an objection is filed, a hearing will be held at a date, time, and place to be determined by the Court.

**Note: Judge Pearson – Make certain that we have updated all local forms.**

#### **4004-1 Discharge Hearings**

##### Chapter 7 Discharge Hearings

Unless otherwise ordered, a Chapter 7 debtor **is** not required to attend a discharge hearing.

Chapter 11 - Discharge Procedure for Individual Chapter 11 Debtor After Completion of Plan Payments

Within ~~thirty (30) days~~ **twenty-eight (28) days** after an individual Chapter 11 Debtor has completed all payments under the Chapter 11 Plan, the Debtor is required to file an *Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments* that conforms to the Court's local form. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review.

Upon the filing of the Affidavit, the Clerk will send to all creditors and parties of interest in the case, a copy of the Affidavit and a notice of the deadline to file written objections to the Affidavit and of the date, time and location of the discharge hearing. If objection to the Affidavit is not timely filed, the debtor and counsel need not appear at the discharge hearing.

#### Chapter 11 - Discharge Procedure for Individual Chapter 11 Debtor Prior to Completion of Plan Payments (Hardship Discharge)

A debtor, who seeks a Chapter 11 discharge prior to completion of all Chapter 11 Plan payments, is required to file a written Motion for Entry of a Discharge Prior to Completion of Plan Payments ("hardship discharge"). The debtor also must complete and attach with the motion an *Affidavit Requesting Entry of Hardship Discharge Order*, which conforms to the Court's local form. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review.

Upon filing of the motion and affidavit, the Clerk will send to all creditors and parties of interest in the case, a copy of the Motion and Affidavit, and a notice of the date, time and location of the hearing on the motion.

#### Chapter 12 and Chapter 13 - Discharge Procedure After Completion of Plan Payments

Within ~~thirty (30) days~~ **twenty-eight (28) days** after the Chapter 12/13 Trustee files a report of the plan's completion and a request for a discharge hearing, the debtor is required to file an *Affidavit Requesting Entry of Discharge Order after Completion of Plan Payments* that conforms to the Court's local form for that chapter. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review.

Upon the filing of the Affidavit, the Clerk will send to all creditors and parties in interest a copy of the Affidavit, along with a notice of the discharge hearing and of the deadline to file written objections to the Affidavit. If objection to the Affidavit is not timely filed, the debtor and counsel need not appear at the discharge hearing.

If the debtor fails to timely file an affidavit, the Court will enter an Order directing the debtor to appear, in person and by counsel, at the discharge hearing and be prepared to address all issues related to discharge.

## Chapter 12 and Chapter 13 - Discharge Procedure Prior to Completion of Plan Payments (Hardship Discharge)

A debtor, who seeks a Chapter 12 or 13 discharge prior to completion of the Plan, is required to file a written motion for entry of a discharge prior to completion of plan payments (“hardship discharge”). The debtor also must complete and file contemporaneously a separate *Affidavit Requesting Entry of Hardship Discharge Order*, which conforms to the Court’s local form for that chapter. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review.

Upon the filing of the motion and the Affidavit, the Clerk will send to all creditors and parties in interest a copy of the motion and Affidavit, along with a notice of the discharge hearing.

### **4004-2            Objections to Discharge**

### **4007-1            Dischargeability Complaints**

### **4008-1            Reaffirmation**

Reaffirmation agreements may be scheduled for hearing if any of the following apply:

- 1)     The agreement is not signed by the debtor or creditor
- 2)     The agreement does not contain the affidavit and signature of counsel for debtor
- 3)     The debtor was not represented by an attorney during negotiation of the reaffirmation agreement, unless reaffirmation agreement involve consumer debt secured by real property;
- 4)     The agreement does not meet all of the requirements of 11 U.S.C. Section 524;
- 5)     The agreement indicates that insufficient income is available to maintain monthly payments reaffirmed or creates an undue hardship, unless the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act; or
- 6)     The agreement is not filed on the Director’s Procedural Reaffirmation Agreement form.

Debtors and debtors’ counsel must both appear at all hearings involving reaffirmation agreements.

### **4070-1            Insurance**

Where the debtor has possession and/or use of secured property and is obligated to keep it insured, the debtor must provide proof of insurance to the creditor holding security in the property within seventy-two (72) hours of a written request to the debtor or to counsel.

## **4071-1          Automatic Stay – Violation of**

## **PART V**

## **5001-1          Court Administration**

### **5001-2          Clerk – Office Locations/Hours**

The Bankruptcy Clerk's main office is located in Charleston, West Virginia. Divisional offices have been approved for Beckley, Huntington, and Parkersburg, West Virginia.

Contact information for the main and divisional offices, and regular business hours may be obtained by contacting the Bankruptcy Clerk's main office or by going to the Bankruptcy Court's website [www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov). Changes in regular business hours may occur and will be posted as soon as possible upon the Court's website.

### **5001-2.1      Public Access to Court Records**

#### Access at the Court

The public may review bankruptcy records at no charge during regular business hours in the Bankruptcy Clerk's main and divisional offices.

#### Remote Access – PACER (Public Access to Court Electronic Records)

For a fee, the public may review electronic records at the Court's internet site by obtaining a PACER login and password at the online site, <http://pacer.psc.uscourts.gov>, or by calling the PACER Service Center at 1-800-676-6856. Those with PACER access who are not filing users may retrieve docket sheets and documents, but may not file documents.

#### Copies

Paper and Certified/Exemplified copies of filed documents may be purchased at the Clerk's Office during regular business hours. If requesting that copies be mailed, a self-addressed, stamped return envelope large enough to hold the requested documents and the proper fee must be provided. Requests must designate the document(s) by title or document number(s). The current fees charged may be obtained from the Clerk's office or on the Court's website [www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov).

### **5001-2.3      Trustee Exemption from PACER Billing**

Chapter 7 Panel Trustees and the Chapter 13 Standing Trustee serving in this district are exempt from PACER fees. The trustee and his or her employees may only use the PACER exemption in the administration of cases to which they are assigned as trustee. The Clerk is authorized to examine and audit all Trustee accounts. In the event a Trustee account has been used for a private or unauthorized purpose, the Court may direct the Trustee to pay for the private or unauthorized usage, and/or may revoke the exemption.

#### **5001-2.4      Voice Case Information System (VCIS)**

Using a standard touch-tone phone, the public may access basic case information by calling the Voice Case Information System (VCIS). The VCIS number to call is available through the Clerk's office, or on the Court's website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)).

#### **5003-1      Clerk – General/Authority**

As directed by the Court, the Clerk is authorized to prepare and enter form orders.

#### **5003-2      Court Papers – Removal of**

Original documents on file in the office of the Clerk of the Bankruptcy Court will not be produced pursuant to a state court subpoena unless a United States District Judge, a United States Magistrate, or a Bankruptcy Judge having jurisdiction in this district, orders the Clerk to produce the documents. Certified copies of documents may be produced for evidentiary purposes in a state court action upon payment to the Clerk of the proper fee.

#### **5003-3      Claims - Register**

#### **5005-1      Filing Papers and Magnetic Media – Requirements**

Place of Filing –

All petitions, pleadings, other papers not filed electronically, must be mailed or delivered in person to the Clerk. Filings made in person may be made during regular business hours at the Bankruptcy Court Clerk's main office in Charleston or at a divisional office. Filings made by mail should be mailed to the Clerk's main office in Charleston.

Filing by Facsimile –

Pleadings or other papers are not to be transmitted for filing to the Clerk's office via a facsimile machine, except when authorized by the Court or the Clerk. The signed original of faxed documents are required to be retained by the filing party or their counsel for a period of no less than ten (10) years after the closing of the case. The documents must be made available for inspection or production upon request by the Court, the United States Trustee's Office, the case trustee and/or their designees.

## Documents Filed on Paper or Magnetic Media –

When a document is filed on paper or on magnetic media, it will be converted to an electronic (PDF) format by the Court, and the electronic document will be treated as and become the original. The paper or magnetic media will be retained by the Court for a period of at least sixty (60) days. A party who desires the return of the paper or magnetic media must file a written request to retrieve within sixty (60) from the date of the filing.

Absent a timely request to retrieve, and provided that disposal is not prohibited, the Clerk is authorized to dispose of the paper or magnetic media.

Any filing or submission that has not been uploaded in its entirety into the CM/ECF system, or for which disposal is prohibited, will be maintained by the Clerk.

For documents filed on paper the following must be observed:

1. Paper used must be of a 20 lb. weight - no coated, heavy or curling paper, no onion skin;
2. No double-sided pages;
3. No staples or bindings;
4. No carbon copies;
5. No tabbed exhibits;
6. Documents must be letter size – 8.5 x 11 inches;
7. The left margin of the matrix must be approximately 1" from the left edge of paper.
8. Font size shall not be less than 10 point, and line spacing shall neither be more than double spaced nor less than single spaced.

If a filing party wishes to have a time-stamped copy returned, the party must enclose an additional copy of the document and a self-addressed, stamped envelope large enough to hold the requested documents.

The following may not be filed electronically unless specifically authorized by the Court:

1. Documents filed by non-registered attorneys, parties in interest and pro se debtors (Non-ECF filers)
2. Sealed Documents –

The motion to file documents(s) under seal may be filed electronically. Once the Order granting the motion has been entered, the actual sealed document(s) must be prepared in paper form and filed with the Clerk of Court. A copy of the Order granting the motion to seal must be attached to the document(s).

3. Trial/contested matter exhibits –

Trial and contested matter exhibits must be submitted and exchanged outside the CM/ECF system. Lists of exhibits and/or witnesses may be filed electronically.

Sealed documents and trial/contested matter exhibits will not be available for viewing via the CM/ECF System unless otherwise authorized.

**5005-2          Filing Papers – Number of Copies**

**5005-3          Filing Papers – Size of Papers**

**5005-4          Electronic Filing**

Electronic filing of documents is permitted utilizing the Case Management/Electronic Case Files System (hereafter CM/ECF System). The Clerk of Court is authorized to establish, promulgate, and modify as necessary Administrative Procedures for Electronic Case Filing (“Administrative Procedures”), including the procedure for registration of attorneys and other authorized users, and for the issuance and control of passwords to permit electronic filing and notice of pleadings and other papers. The Administrative Procedures will be available on the Court’s website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)) and at the Clerk’s offices.

A filing party or their counsel, who electronically files a signed document, must retain the original for a period of no less than seven (7) years after the closing of the case. These documents include, but are not limited to the bankruptcy petition, lists, schedules, statements, amendments, pleadings, affidavits, and any other document which contains an original signature, requires verification or includes an unsworn declaration. Original documents must be made available for inspection or production upon request by the Court, the United States Trustee’s Office, the case trustee and/or their designees.

**5005-4.1      Electronic Entry of Orders**

Any order or other Court issued document signed electronically by the Judge or Clerk has the same force and effect as if the Judge or Clerk had signed a paper copy of the order or document. Orders may also be issued as text only entries on the docket without an attached PDF of a document. Such orders are official and binding.

**Note:** Judge Pearson – Text only orders are ok. The Bar’s views are needed; if the text only orders language is kept, we will need set procedures to give notice of entry of the order to both CM/ECF users and non users.

**5009-1          Final Report/Decree**

**5010-1          Reopening Cases**

A motion to reopen a closed bankruptcy case must state with particularity the grounds for the relief sought and indicate whether a trustee should be appointed. The motion must be accompanied by

any required filing fee, unless the motion requests a waiver. A motion filed by the trustee may request deferment of the fee, pending discovery of additional assets. If additional assets are not discovered, the fee is deemed to be waived.

A movant must serve a copy of the motion and any supporting documents upon all parties affected by the reopening of the case.

**5011-1          Withdrawal of Reference**

**5011-2          Abstention**

**5070-1          Calendars & Scheduling**

**5071-1          Continuance**

Proceedings Before the Court

A party requesting the continuance of a scheduled hearing or other proceeding (excluding meetings of creditors) must file a motion stating the reason for the requested continuance, the approximate length of time requested for the continuance, and whether or not the relevant parties to the hearing consent to the continuance. The motion must be accompanied by a proposed order, which specifies the matter(s) being continued. The motion must be filed as far in advance of the hearing as possible. Counsel must appear at the scheduled hearing, unless a written motion or oral request is made at least **three (3) business days** prior to the scheduled hearing. A motion or oral request made less than **three (3) days** will be considered by the Court at the scheduled hearing.

To prevent unnecessary court appearances, the moving/requesting party must notify all interested parties as soon as a continuance is granted.

**5072-1          Courtroom Decorum**

**5072-2          Court Security**

**5073-1          Photography, Recording Devices & Broadcasting**

The Local Rules of Procedure governing proceedings in the District Court for the Southern District of West Virginia regarding photographing and broadcasting of court proceedings, applies to cases pending in the Bankruptcy Court.

Note: SDWV local rule 83.10 and 83.11 govern photography and broadcasting of court proceedings.

**5075-1          Clerk – Delegated Function of**

**5076-1          Court Reporting**



## **5077-1 Transcripts**

### **Recordings of Hearing/Trial -**

Recordings of court proceedings are available in electronic media through the Clerk's Office. Requests for transcripts may be made on a form substantially in compliance with the Court's form (Request For Media Recording of Hearing/Trial) and must be accompanied by the applicable fee. The names of qualified transcribers capable of transcribing from the electronic media can be obtained from the Clerk's Office or on the Court's website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)).

### **Procedure for Review and Redaction of Electronic Transcripts of Court Proceedings -**

This rule applies to all transcripts of a court proceeding filed with the Court and made available to the public electronically.

Transcripts will be available at the Clerk's Office for inspection only, and not for copying, for a period of ninety (90) days after delivery to the Court. During the ninety (90) day period, any copy of the transcript must be obtained from the court reporter or transcriber for the fee established by the Judicial Conference. An attorney who purchases the transcript from the transcriber during the ninety (90) day restriction period may obtain remote electronic access to the transcript through the Court's CM/ECF System via the judiciary's PACER system, subject to applicable PACER fees. Members of the public, including the news media, who purchase a transcript, shall not be granted remote electronic access to a transcript during the ninety (90) day restriction period.

After the ninety (90) day period has ended, a filed transcript will be available for inspection and copying in the Clerk's Office and for downloading from the Court's CM/ECF System via PACER. PACER fees apply at all times when accessing transcripts remotely and the thirty (30) page cap does not apply to viewing or printing a transcript via PACER.

When a transcript is filed, the attorneys and pro se parties who attended the hearing are solely responsible for the reaction of private information set out in Bankruptcy Rule 9037. Each party is responsible for reviewing and indicating redactions in the testimony of the witnesses that were called by that party and in the party's own statements.

Upon the filing of a transcript, the Clerk will issue the "Clerk's Notice of Filing of Transcript and of Deadlines Related to Restriction and Redaction". The parties will have **seven (7) calendar days** from the date of filing of the transcript to file a "Notice of Intent to Request Redaction of Transcript".

Unless otherwise ordered by the Court, within **twenty-one (21) calendar days** of the filing of the transcript, parties who timely file a "Notice of Intent to Request Redaction of Transcript", must file and serve upon the transcriber a "Request for Redaction of Personal Data Identifiers" ("Request for Redaction"). The "Request for Redaction" must indicate, by page and line number, the location of the personal data identifiers for which redaction is being requested. The "Request for Redaction" will appear as a public document on the docket, therefore the "Request for Redaction" must be worded so that it does not contain unredacted personal identifiers.

For purposes of this procedure, personal data identifiers only include: individual Social Security numbers, individual taxpayer identification numbers, financial account numbers, names of minor children, and dates of birth. Parties seeking to redact additional information must file a motion for protective order pursuant to Bankruptcy Rule 9037(d) and serve a copy on the transcriber.

If a “Notice of Intent to Request Redaction of Transcript” has been filed and a subsequent “Request for Redaction” is filed within the **twenty-one (21) calendar day** deadline, the transcriber is required to partially redact the personal data identifiers identified in the “Request for Redaction” as follows:

Social Security numbers and taxpayer-identification numbers, will use only the last four digits;

Financial account numbers, will use only the last four digits;

Names of minor children, will use only their initials; and

Dates of birth, will use only the year.

Within thirty-one (31) calendar days from the filing of the transcript, the transcriber must file a redacted transcript with an amended certification indicating that the transcript was amended by the redaction of certain personal identifiers at the request of the parties. Parties who have previously purchased the unredacted transcript will be given remote access to the redacted transcript.

After the ninety (90) day restriction period has expired (unless there are pending related redaction motions), the filed transcript (or the redacted transcript, if filed) will be available for inspection and copying at the clerk’s office and for downloading from the court’s CM/ECF system via PACER. If a redacted transcript has been filed in accordance with the provisions of this Order, the unredacted version will NOT be available via remote electronic access but will be available for inspection and copying at the clerk’s office. Copy fees and PACER access fees apply.

This rule and policy:

A. Do not affect the obligation of the Clerk to make the official transcript available for copying by the public without further compensation to the transcriber ninety (90) days after the transcript is filed pursuant to Judicial Conference policy.

B. Are not intended to create and do not create a private right of action.

C. Are not intended to change and do not change any rules or policies with respect to sealing or redaction of court records for any other purpose.

D. Do not prevent the production of a transcript on an expedited basis for a party, or any other person or entity that may order such a transcript, subject to whatever court rules or orders are currently imposed to protect sealed materials. An entity that provides a transcript to a non-party on an

expedited basis must alert the non-party to the Judicial Conference policy on privacy and public access to electronic case files.

**5078-1            Copies – How to Order**

**5080-1            Fees – General**

All fees payable to the Clerk must be paid at the time of filing or at the time the service is provided, unless an IFP Application Requesting a Waiver; a Motion to Pay in Installments; or a Motion to Defer has been filed or unless the Court has previously ordered otherwise. Fees will be charged pursuant to the Bankruptcy Court Filing and Miscellaneous Fee Schedule, as prescribed by the Judicial Conference.

All requests to refund or return fees that have been paid to the Clerk must be made in writing, and must provide the case name, case number, and the reason for the request.

**5081-1            Fees - Form of Payment**

Subject to collection, the Clerk will accept checks from counsel of record, Chapter 11 debtors, Chapter 12 debtors and Chapter 13 Debtors. Fees paid by Chapter 7 debtors will be accepted only if payment is made by cash, cashier's check or money order. Credit card payments may be made in person at the Clerk's office or online by an attorney in accordance with the "Administrative Procedures for Electronic Case Filing".

**5090-1            Judges – Visiting & Recalled**

**5091-1            Signatures – Judges**

**5092-1            Seal of the Court**

**5095-1            Investment of Estate Funds**

**PART VI**

**6004-1            Sale of Estate Property**

Disbursement of Sale Proceeds

All proceeds of a sale shall be paid directly to any appointed trustee or the debtor in possession, unless otherwise ordered. No disbursement of proceeds shall be made without a specific order from the Court authorizing the disbursement, except for payments to secured creditors, payment to debtors for exempt proceeds, and payments for the expenses of the sale.

Report of Sale

A statement/report of sale required under Fed. R. Bankr. P. 6004, must be filed no later than ~~twenty (20) days~~ **twenty-one (21) days** after the sale, unless otherwise ordered.

### Sales and Refinancing of Real Property in Chapter 13 Cases

A motion to sell or refinance must include:

- (a) Whether the plan has been confirmed, and if so, whether the sale is pursuant to the terms of the confirmed plan;
- (b) The total proposed sales price, or maximum amount to be secured by the refinancing, and the amount of existing secured debt to be paid;
- (c) The realtor's name and amount to be paid;
- (d) An explanation of all deductions from the sale or refinancing proceeds;
- (e) The amount to be applied to the Chapter 13 plan, and the effect upon creditors;
- (f) The amount of the sale or loan proceeds proposed to be paid to the debtor.

**Note: This will have to be reviewed if Congress changes the law.**

### **6005-1 Appraisers & Auctioneers**

### **6006-1 Executory Contracts**

A motion to extend the time within which to assume or reject an executory contract or unexpired lease may be granted by the Court, in the first instance, without a hearing, if good cause is shown for the extension. The movant must submit a proposed order with the motion that substantially conforms to the Court's local form order. The order must state that the motion is granted unless a written objection to the extension is filed within ~~twenty (20) days~~ **twenty-one (21) days** of the entry of the order and, after hearing, the Court determines relief from the order is warranted. The movant must serve the order on all parties to the contract or lease and any other interested parties.

### **6007-1 Abandonment**

A secured creditor may expedite the abandonment of estate property by completing a "Trustee's Notice of Intent to Abandon Property" form, along with a copy of the properly recorded security interest, and forwarding it to the appropriate Trustee. Upon receipt of the Trustee's signature, the creditor must file and serve the completed form. A creditor is not required to pay a filing fee when obtaining abandonment by this procedure.

**Note: The local form must be updated re: title and mailing instructions on second page.**

## **6008-1        Redemption**

A motion to redeem tangible personal property must state the debtor's estimated value of the property and the amount to be paid. A motion to redeem that fails to assert the value of the property or amount to be paid, may be denied without a hearing.

## **6070-1        Tax Returns & Tax Refunds**

### **Tax Returns or Transcripts of Tax Returns**

All tax returns and tax transcripts required to be provided by a debtor to a Trustee, must be filed with the Court and served upon the Trustee at least **seven (7) days** before the first date set for the Meeting of Creditors.

A motion must be filed to: 1) obtain access to a debtor's tax information; 2) request returns be filed pursuant to 11 U.S.C. §521(f); or, 3) provide tax returns to a creditor under 11 U.S.C. §521 (e)(2)(A). The motion must be served on the debtor and debtor's counsel.

The motion must include the following:

- a. A description of the moving party's status in the case;
- b. A description of the specific tax information sought;
- c. A statement indicating that the information cannot be obtained by the movant from any other sources;
- d. A statement showing a demonstrated need for the tax information, which statement reflects the movant's understanding that the statement is subject to Bankruptcy Rule 9011 sanctions;
- e. A statement that the movant has read or has had an attorney explain the content and confidentiality requirements of 26 U.S. Code § 6103 and Bankruptcy Rule 9037; and that the movant understands and will comply with those confidentiality requirements.

The proposed order which accompanies the written motion is required to include language that explicitly states that the information obtained is confidential and its use is limited to the reasons specified in the motion. The proposed order must further specify that sanctions, including criminal prosecution, may be imposed for the improper use, disclosure or dissemination of the information.

To maintain required confidentiality, any tax returns or tax transcripts filed with the Court will not be subject to public inspection, copy or review. Tax returns/transcripts will be shown as filed on the Court Docket Sheet, but will not be accessible online or in person at the Clerk's office except by the United States Trustee, Trustee and Court staff.

## **PART VII**

## **7001-1      Adversary Proceedings - General**

The District Court Local Rules of Procedure will apply to the Bankruptcy Court and bankruptcy adversary proceedings only when the District Court Local Rules of Procedure or these Local Rules specify.

## **7003-1      Cover Sheet**

All complaints filed on paper initiating adversary proceedings must be filed with a fully completed Adversary Proceeding Cover Sheet (Form B104). Electronically filed complaints do not need to include an Adversary Proceeding Cover Sheet.

## **7004-1      Service of Process**

## **7004-2      Summons**

When a complaint is filed electronically, the Clerk will issue and transmit the summons electronically to counsel for the plaintiff. When a complaint is filed on paper, the Clerk will issue and mail the summons to counsel for the plaintiff, or if unrepresented, to the plaintiff.

## **7005-1      Certificate of Service (APs)**

## **7005-2      Filing of Discovery Materials**

## **7007-1      Motion Practice (in APs)**

### **Hearings on Motion**

All hearings will be scheduled by the Court.

Motions in adversary proceedings may be considered and decided by the court on the pleadings, admissible evidence in the record, and motions and written replies/responses, papers and supporting memoranda, without hearing.

### **Reply/Response; Time for Response**

Unless a statute, rule or court order provides otherwise, a reply/response is due within ~~twenty (20) days~~ **twenty-one (21) days** from the date the motion is filed, or if a hearing has been scheduled, at least **three (3) days** before the hearing date, whichever is earlier. The court, in its discretion, may grant or deny a non-dispositive motion before a response deadline has expired (for example, grant or deny a motion to continue). This rule should not be construed to require a reply/response if one is not warranted.

## **Motions to Dismiss Adversary Proceedings**

A motion to dismiss an adversary proceeding must state the terms of any compromise if the settlement affects creditors in the main case, the Trustee, or other parties in interest.

### **7007.1-1 Financial Disclosure by Corporate Party**

Note: Add a comment with a link to the local form.

### **7008-1 Core/Non-Core Designation (Complaint)**

### **7012-1 Core/Non-Core Designation (Responsive Pleading)**

### **7016-1 Pre-trial Procedures**

A Time Frame Order (“Scheduling Order”) ordinarily will be issued by the Court when all responsive pleadings have been filed or the time for filing responsive pleadings has expired. The Time Frame Order may set dates for completing discovery, filing dispositive motions, filing witness and exhibit lists, the settlement conference, and trial. If all parties agree, the Court may permit the parties to submit a Time Frame Order setting deadlines, with the exception of the settlement conference and trial dates.

NOTE: The court may post recommended time frame/scheduling order forms on its website, [www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov). Use of the court’s forms is encouraged, but not required.

### **7023-1 Class Action**

In class action proceedings, a case management conference may be scheduled by the Court when all responsive pleadings have been filed or the time for filing responsive pleadings has expired.

### **7024-1 Intervention**

### **7024-2 Unconstitutionality, Claim of**

### **7026-1 Discovery – General**

Discovery rules and guidelines will be established by the Court in the Court’s Time Frame (Scheduling) Order.

### **7030-1 Depositions & Examinations (AP’s)**

### **7040-1 Assignment of Adversary Proceedings**

Adversary Proceedings will be assigned to the division of the District where the bankruptcy case arose. Trials and other proceedings will be scheduled in the division assigned, unless otherwise

agreed by the parties or ordered by the court, or to permit expedited consideration of actions entitled to priority by federal statute.

**7052-1 Findings & Conclusions**

**7054-1 Costs – Taxation/Payment**

See Local Rule 7069-1 Judgment – Payment of

**7055-1 Default – Failure to Prosecute**

When it appears to the Court that the principal issues have become moot or the parties have shown no manifest interest to further prosecute a pending adversary proceeding, the court may direct the Clerk to issue a "Notice of Time to Object to Dismissal". The notice will be served on the parties and counsel of record and will state that the action may be dismissed after ~~thirty (30) days~~ **twenty-eight (28) days** from the date of issuance, unless a written response is filed stating good cause why the proceeding should not be dismissed.

**7056-1 Summary Judgment**

**7065-1 Injunctions**

**7067-1 Registry Fund**

Receipt of Funds

A motion to pay monies into the registry of the court must contain: (1) the name, address, and telephone number of the person or entity paying the money into the registry of the court; (2) the name and addresses of the person or other entity for whom the monies are being held; and (3) the sum of money and date to be paid into the court's registry. Money paid to the court or its officers for deposit into the court's registry must be accompanied by a copy of the Court's order authorizing the payment.

Deposit of Funds

No deposit may be made in the absence of a court order. Unless provided for elsewhere in this rule, all money ordered to be paid into the court registry or received by its officers in any case pending or adjudicated will be deposited with the Treasurer of the United States in the name and to the credit of this court through depositories designated by the Treasury to accept such deposits on its behalf.

Investment of Registry Funds

Unless otherwise ordered by the court, funds on deposit with the court are to be placed in an interest-bearing account. Funds below the Federal Deposit Insurance Corporation (FDIC) limit for



insurance may be held at local depositories. Funds exceeding the FDIC limit will be deposited into the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas.

#### Registry Investment Fee

The custodian is authorized and directed by this rule to deduct a registry fee for maintaining accounts in the registry fund. The proper registry fee will be determined on the basis of the rates published by the Director of the Administrative Office for the United States Courts, as approved by the Judicial Conference.

#### Withdrawals

Funds may only be disbursed from the court's registry upon entry of an order authorizing the disbursement. The order directing disbursement shall include: (1) the name and address of each person or other entity to receive funds; and (2) the sum of money to be paid to each person or other entity, along with any interest accrued thereon, less the court's fee as authorized by the Judicial Conference of the United States.

### **7069-1      Judgment – Payment of**

#### **Post Judgment Remedies**

**Forms for the following post-judgment remedies are available on court's website.**

#### Praecepte

To obtain any of the following post-judgment remedies, a judgment creditor must file a written praecipe requesting the relief sought and must complete the appropriate form from the court's website.

**NOTE: Update local praecipe form to include a return date for writ of execution.**

#### Costs – Taxation/Payment

A judgment creditor may tax costs only if costs are awarded in the judgment order. To tax costs, the judgment creditor must file a Bill of Costs. A Bill of Costs must substantially conform to Form B 263, available from the Clerk or on the Court's website ([www.wvsc.uscourts.gov](http://www.wvsc.uscourts.gov)).

To include costs in an abstract of judgment or a writ of execution, a Bill of Costs must be filed prior to or with the praecipe.

#### Interest on Judgments

Unless the judgment order states otherwise, a judgment creditor is entitled to interest from the date of the entry of the judgment. If no interest rate is specified in the judgment order, interest will be calculated at the legal rate for post-judgment interest. A link to Post-Judgment Interest Rates is available on the court's website.

#### Post-Judgment Remedies - Writ of Execution

The judgment creditor must file a praecipe and a completed Writ of Execution form. Unless otherwise ordered by the Court, a writ of execution will not be issued until ~~ten (10) days~~ **fourteen (14) days** after the entry of the judgment order. A writ of execution will not be issued if the judgment debtor has obtained a stay pending appeal and posted a supersedeas bond in the amount set by the Court. No bond is required for an appeal taken by the United States or an agency thereof.

A writ of execution will be made returnable not less than **thirty (30) days** or more than ninety (90) days after issuance. The praecipe should indicate the return date desired by the judgment creditor. Upon issuance of the writ of execution, the Clerk will return the original and one (1) copy of the writ to the requesting party, along with a blank U.S. Marshal's Process Receipt and Return Form 285 (U.S. Marshal's Form 285). The original and one (1) copy of the writ and the completed U.S. Marshal's Form 285 must be presented to the U.S. Marshal Service for processing.

#### Post-Judgment Remedies - Suggestion

The judgment creditor must file a praecipe, a completed Suggestion and Summons form, and a completed Notice of Possibility of Exemptions to Suggestion, if required. A suggestion can be issued only after a writ of execution has been issued, although both may be requested at the same time. By certified mail, the Clerk will send to the requesting party the original suggestion with summons, a copy of the notice of possibility of exemptions if issued, and a blank U.S. Marshal's Form 285. The Clerk will also serve on the judgment debtor, via certified mail, a copy of the suggestion and, if issued, the original of the notice of possibility of exemptions.

#### Post-Judgment Remedies - Suggestee Execution

The judgment creditor must file a praecipe, a completed Suggestee Execution form, an Affidavit for Suggestee Execution, and Notice of Possibility of Exemptions to Suggestee Execution, if required. A suggestee execution can be issued only after a writ of execution has been issued, although both may be requested at the same time. By certified mail, the Clerk will send to the requesting party the original suggestee execution, a copy of the notice of possibility of exemptions if issued, and a blank U.S. Marshal's Form 285. The Clerk will serve on the judgment debtor, via certified mail, a copy of the suggestee execution and, if issued, the original of the notice of possibility of exemptions.

The amount contained in the affidavit for suggestee execution can be less than the amount contained in the judgment order, but never more. Renewal of a suggestee execution must be requested and issued prior to the expiration of the one-year period for which it was originally issued.

#### Post-Judgment Remedies - Abstract of Judgment

The judgment creditor must file a praecipe and a completed Abstract of Judgment form. The Clerk may issue an abstract of judgment any time after entry of the judgment order. Upon issuance, the Clerk will return the original abstract and three (3) copies, unless more are requested, to the judgment creditor.

#### Post-Judgment Remedies - Abstract of Execution

The judgment creditor must file a praecipe and a completed Abstract of Execution form. A suggestion can be issued only after a writ of execution has been issued. Upon issuance, the Clerk will return the original abstract and three (3) copies, unless more are requested, to the judgment creditor.

#### Post-Judgment Remedies - Writ of Possession

The Clerk will issue a writ of possession only upon order of the Court.

#### Certification of Judgment for Registration in Another District

The judgment creditor must file a praecipe, along with a completed Certification of Judgment for Registration in Another District form, and must pay the certification fee plus any applicable copy fees. The Clerk will issue the Certification and return it to the requesting party with a certified copy of the judgment order. It is the responsibility of the requesting party to forward the Certification and a certified copy of the judgment order to the Court or Clerk of the Court where the party desires to register the judgment.

#### Registration in this District

The judgment creditor must file a properly issued Certification of Judgment for Registration in Another District and pay the prescribed registration fee. The Clerk will open a miscellaneous case and assign it a miscellaneous case number.

### **PART VIII**

**8001-1      Notice of Appeal**

**8001-2      Dismissal of Appeal (Voluntary)**

**8001-3      Election for District Court Determination of Appeal**

**8001-3.1    Election for Direct Appeal to Court of Appeals?? (Note: check for 4<sup>th</sup> Circuit rules if completed)**

**8002-1      Time for Filing Appeal**

**8003-1            Motion for Leave to Appeal**

**8004-1            Service of Notice of Appeal**

The Clerk is authorized to serve notice of the filing of a notice of appeal by electronic transmission to a party who is registered filing user of the CM/ECF system in this district and who has not requested to also receive paper mailings.

NOTE: Can we do this via electronic means? Does Rule 8004 allow the Clerk to serve by electronic means? (see 9036)

**8005-1            Stay Pending Appeal**

Unless otherwise ordered, a supersedeas bond to stay execution of a judgment will be in the amount of 125% of the judgment in order to cover the judgment, costs, interest, and any damages for delay.

**8006-1            Designation of Record - Appeal**

A designation of record must include the document's docket number and an abbreviated description of each item designated. If an image of a designated item is not available on the CM/ECF system, the filing party must provide to the Clerk a copy of the item designated or, if the party fails to provide the copy, the Clerk may prepare the copy at the expense of the party.

**8007-1            Completion of Record – Appeal**

**8007-2            Transmission of Record – Appeal**

**8007-3            Docketing of Appeal**

**8007-4            Record for Preliminary Hearing – Appeal**

**8008-1            Filing Paper – Appeal**

**8008-2            Service of All Papers Required – Appeal**

**8008-3            Proof of Service of Filed Papers – Appeal**

**8009-1            Time for Filing Briefs – Appeal**

**8009-2            Time for Filing Appendix to Brief – Appeal**

**8010-1            Form of Briefs – Appeal**

- 8010-2        Reproduction of Statutes, Etc. – Appeal**
- 8010-3        Length of Briefs – Appeal**
- 8011-1        Motion, Response, Reply – Appeal**
- 8011-2        Determination of Procedural Motion – Appeal**
- 8011-3        Determination of Motion – Appeal**
- 8011-4        Emergency Motion – Appeal**
- 8011-5        Power of Single Judge to Entertain Motions**
- 8012-1        Oral Argument – Appeal**
- 8013-1        Disposition of Appeal**
- 8014-1        Costs – Appeal**
- 8015-1        Motion for Rehearing – Appeal**
- 8016-1        Entry of Judgment by Clerk of District Court or BAP**
- 8016-2        Notice of Order or Judgment – Appeal**
- 8016-3        Return of Record on Appeal**
- 8017-1        Stay Pending Appeal to Court of Appeals**
- 8018-1        Local Rules of Circuit Judicial Council or District Court**

## **PART IX**

### **9001-1        Definitions**

Court refers to the U.S. Bankruptcy Court for the Southern District of West Virginia, unless otherwise indicated.

Clerk refers to the Clerk of the Bankruptcy Court, unless otherwise indicated.

Debtor includes any joint debtor in the case.

### **9003-1        Ex Parte Contact**

## **9004-1          Papers – Requirements of Form**

### **9004-2          Caption – Papers, General**

The caption of all documents filed must identify any other filed pleading or paper to which it relates. A request to shorten time or for expedited consideration must be clearly indicated in the caption of the document.

### **9006-1          Time Periods**

Unless otherwise prohibited by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, if a motion to extend the time to take any action is filed before the expiration of the period set, the time shall be extended automatically until the court acts on the motion.

### **9009-1          Forms**

The Bankruptcy Clerk is authorized to prepare, revise, publish and withdraw local forms, without notice or comment. Local forms will be available through the Bankruptcy Clerk's office and on the Bankruptcy Court's website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)).

## **9010-1          Attorneys – Notice of Appearance**

### **9010-2          Power of Attorney**

In the event a petition is signed on behalf of the debtor by a person pursuant to a power of attorney, the following is required:

- (A) The power of attorney must be:
  - (i) A general power of attorney specifically authorizing the attorney-in-fact to take any action which the debtor could take;
  - Or
  - (ii) A special power of attorney specifically authorizing the attorney-in-fact to file bankruptcy;
- (B) The power of attorney must be valid under applicable non-bankruptcy law; and,
- (C) A copy of the power of attorney must be filed with the petition or other initial document.

## **9011-1          Attorneys – Duties**

## **9011-2        Pro Se Parties**

In any case or proceeding before the Court, only an individual may appear, file pleadings or represent himself/herself without counsel (*Pro Se*). Any paper filed by a party not represented by counsel must include the signature of the party and his/her complete name, mailing address, and telephone number. A *Pro Se* party must advise the clerk promptly of any changes in name, address, and telephone number.

Any party or entity may sign and file proofs of claims and attend a §341 Meeting of Creditors without being represented by counsel. In all other situations, all other parties and entities, including but not limited to corporations and unincorporated associations, must be represented by a member of the bar of this Court.

## **9011-3        Sanctions**

## **9011-4        Signatures**

Signing of Electronically Filed Pleadings, Motions, etc.

Any filing subject to Fed. R. Bankr. P. 9011 that is electronically filed by a registered CM/ECF user must be filed as either: (1) a document containing the signature of the person signing said document, or (2) a document displaying the name of the person signing said document, preceded by an “/s/” (e.g., “/s/ Jane Doe”). The electronic signature of the person on the document electronically filed shall constitute the signature of that person for purposes of Fed. R. Bankr. P. 9011.

## **9013-1        Motion Practice**

### **(a) Requirements**

Each motion filed with the Clerk shall be filed with the following:

1. A proposed order which, if entered by the Court, would grant the relief sought by the motion;
2. A “negative notice”, if filed in accordance with the Default Motion Practice set out below;
3. A certificate of service which states the name and address of every party served and the method of service. If the entire creditor body is served, the certificate of service may recite service on "all creditors listed on the mailing matrix", provided that a copy of the mailing matrix is attached.

### **(b) Default Motion Practice**

The Court may grant by default the relief sought in a motion, provided the movant files a “negative notice” and certificate of service and provided no timely objection is filed. A “negative notice” should set forth with particularity the nature of the motion and the relief sought, or should be attached to a copy of the motion. The “negative notice” should clearly state that an order may be entered granting the relief requested unless a written objection is filed within a specific period of time from the date of the mailing of the notice and should state that a hearing will be scheduled if a written objection is timely filed. An objection filed in response is required to specifically state all grounds upon which it is based. Unless a written objection is timely filed, the Court may, without hearing, enter an order granting the relief requested.

Hearings will be scheduled on all motions where the movant requests a hearing, an objection is filed or the proper default practice is not followed. If a hearing is scheduled, the Clerk may direct the movant to prepare a notice that states the nature of the motion and the relief sought.

The following motions may be filed utilizing the default motion practice:

1. Motion to Compromise - The movant is required to prepare a ~~twenty (20) day~~ **twenty-one (21) day** negative notice and to serve it in accordance with Bankruptcy Rule 2002(a). The terms of the settlement must be included in the negative notice. A motion to compromise an adversary proceeding must be filed in the adversary proceeding; however, the CM/ECF system will cause the motion to also appear on the related main case docket.
2. Motion for Use, Sale, or Lease of Property Pursuant to Bankruptcy Rule 6004(c) - The movant is required to prepare a ~~twenty (20) day~~ **twenty-one (21) day** negative notice which contains the terms as set forth in Bankruptcy Rule 2002(c) and to serve it in accordance with Bankruptcy Rule 2002(a).
3. Motion for Relief from Automatic Stay (Only Chapter 7 involving personal property and non-residential real property and surrendered residential real property) - The movant is required to file and serve a ~~fifteen (15) day~~ **fourteen (14) day** negative notice. The motion and notice must be filed and served upon the debtor(s), counsel for the debtor(s), the Trustee and any other affected party. The notice must give ~~fifteen (15) days~~ **fourteen (14) days** following service to file an objection to the motion. See also Local Rule 4001-1.
4. Motion for Redemption - The movant is required to prepare a ~~twenty (20) day~~ **twenty-one (21) day** negative notice and serve it on the affected creditor(s). See also Local Rule 6008-1.



5. Motion to Avoid Lien – The movant is required to prepare a ~~twenty (20) day~~ **twenty-one (21) day** negative notice and serve it on parties set forth in Local Rule 4003-2.

(c) Withdrawal of motion by notice.

When a motion filed with the Court has not been acted upon, the movant may withdraw the motion by filing a notice of withdrawal of motion. The notice of withdrawal of motion must be served upon all affected parties. If a hearing has been scheduled, the moving party also must notify the Clerk by telephone that the hearing may be cancelled.

(d) Construction

A party is not deemed to be an "affected party" solely because the party is the holder of an unsecured claim against or equity interest in the debtor.

(e) Request to shorten time and/or for expedited consideration

Any request to shorten time and/or for expedited consideration must be made in by separate written motion or set forth as a separate prayer for relief in the underlying motion. The motion must state the necessity for the request and the desired length of time or deadline for action by the court. A moving party must contemporaneously serve both (a) the motion to shorten time and/or for expedited consideration, and (b) the related underlying motion.

The Clerk is authorized to direct the movant to serve an order shortening time or granting expedited consideration and to file a certificate indicating such service. Every effort must be made by the moving party to timely serve the motion(s) and any related order. If necessary, the motion(s) and order should be transmitted to all applicable parties by hand delivery, overnight delivery, facsimile, or other electronic transmission. In instances where service is not possible, counsel must telephonically provide notice to parties in interest. The certificate of service filed with the Clerk must state the manner in which notice/service was made to each party.

## **9013-2        Briefs & Memoranda of Law**

## **9013-3        Certificate of Service – Motions**

In addition to any requirement for service found in the Federal Rules of Bankruptcy Procedure, all motions must be served upon the debtor, and if represented, the attorney for the debtor.

## **9015-1        Jury Trial**

(a) A demand for a jury trial must state whether the party consents to the jury trial being conducted

by the bankruptcy judge.

(b) On motion, or on its own initiative, the court may determine whether there is a right to a trial by jury of the issues for which a jury trial is demanded.

(c) Within the later of (1) the time required for the filing of a response to the pleading in which a jury demand is set forth, or (2) **fourteen (14) days** after the filing of a jury demand, any other party must file a statement consenting or objecting to a jury trial conducted by the bankruptcy judge.

(d) To the extent applicable, the Local Rules of Procedure for the United States District Court for the Southern District of West Virginia will govern matters pertaining to the conduct of jury trials in bankruptcy court.

**9016-1 Subpoenas**

**9016-2 Witnesses**

**9019-1 Settlements and Agreed Orders**

**9019-2 Alternative Dispute Resolution (ADR)**

The Court may permit or require mediation of any issue or dispute. The terms and conditions of the mediation will be governed by a mediation scheduling order.

**9020-1 Contempt**

**9021-1 Judgments & Orders – Entry of**

**9021-2 Orders – Effective Date**

**9022-1 Judgments & Orders – Notice of**

**9027-1 Removal/Remand**

Removal

Pursuant to the District Court's local rule regarding the Referral of Cases to Bankruptcy Court, and pursuant to 28 U.S.C. §§ 157, 1334, and 1452, and consistent with Fed. R. Bankr. P. 9027, all removal actions arising in, arising under, or related to a case under title 11 are referred to the United States Bankruptcy Court for the Southern District of West Virginia. The Notice of Removal of a civil action pending in a court within the Southern District of West Virginia must be filed with the Bankruptcy Clerk. The removed action is treated as an adversary proceeding and requires payment of the same fee as that charged for an adversary proceeding.

## **9029-1            Local Rules – General**

By Order entered on \_\_\_\_\_, these Local Rules were adopted by the Judges of this District and became effective \_\_\_\_\_. The judges of the District Court may amend and supplement these Local Rules from time to time.

The Supreme Court of the United States has, pursuant to 28 U.S.C. § 2075, prescribed rules of procedure in bankruptcy cases. Fed. R. Bankr. P. 9029 provides that courts may adopt local rules that are not inconsistent with the Federal Rules of Bankruptcy Procedure. These Local Rules of the United States Bankruptcy Court for the Southern District of West Virginia are prescribed and promulgated as Local Rules governing practice and procedure before the Court. References to statutes, regulations, or rules shall be interpreted to include revisions and amendments made subsequent to the adoption of these Local Rules.

Unless otherwise ordered, on the effective date, these Local Rules will govern all proceedings in all pending and subsequently filed cases. As of the effective date, these Local Rules supersede all previously-adopted local bankruptcy rules.

The Court may waive or modify any provision of these Local Rules sua sponte, by administrative or general order, or upon the motion of any party in interest. Notwithstanding any variance with these Local Rules, an order pertaining to a procedure entered in a case or proceeding will govern that case or proceeding.

## **9029-2            Local Rules – General Orders**

Prior to the effective date of these Local Rules, the Court has entered various General Orders. The applicable provisions of those General Orders are incorporated in these Local Rules, with the exception of orders regarding internal office practices, unexpired PACER fee exemptions and retention of Interim Bankruptcy Rule 5012, and all other General Orders are rescinded upon adoption of these Local Rules. A copy of General Orders will be provided by the Clerk upon request and will be available on the Court's website ([www.wvsb.uscourts.gov](http://www.wvsb.uscourts.gov)).

## **9029-3            Local Rules – District Court**

The District Court Local Rules of Procedure will apply to the Bankruptcy Court and bankruptcy cases only when the District Court Local Rules of Procedure or these Local Rules specify.

### **9035-1            Bankruptcy Administrators**

### **9036-1            Notice by Electric Transmission**

### **9070-1            Exhibits**

**NOTE: SEE LR 5005-1 PAPER FILINGS – REQUIREMENTS**

#### **9071-1        Stipulations**

As long as the terms of stipulations do not require the Court's approval, the Court will accept stipulations agreed to and entered into by parties. These matters would include, for example, a stipulation extending the time to answer a complaint, providing for the taking of a deposition, modifying discovery procedures or resolving a valuation issue.

#### **9072-1        Orders – Proposed**

All motions filed must be accompanied by a proposed order for entry by the Court. In the event a motion is not accompanied by a proposed order, the Clerk may issue a deficiency notice or schedule the motion for hearing. All proposed orders and any orders drafted at the direction of the Court must include a caption which adequately summarizes the substance of the order. Proposed orders must not be submitted on counsel's letterhead or bear the engraved name of the firm. Orders should not contain language directing the Clerk to send certified copies.

Orders approving a compromise, settling a controversy, or setting forth terms of a sale tend to be voluminous in nature. Because these lengthy orders must be served on the creditor body, the Clerk is authorized to direct counsel to prepare a notice that contains a concise summary of the terms of the compromise to be mailed in place of the order.

Attorneys requested by the Court to submit an order reflecting a hearing must submit the proposed order within ~~ten (10) days~~ **fourteen (14) days**, unless otherwise directed. The order must include the date of the hearing, all appearances noted at the hearing, and the Court's ruling.

#### **9073-1        Hearings**

NOTE: SEE LR 1072-1

#### **9074-1        Telephone Conferences**

##### **Telephonic Court Hearings or Other Proceedings**

For the convenience of the parties, and in the absence of a specific objection, the court may hold hearings or other proceedings by telephone or video conference. Parties who desire to appear by telephone or video conference at a previously scheduled hearing must file a written motion at least ~~ten (10) days~~ **fourteen (14) days** prior to the hearing.

#### **9075-1        Emergency Orders**

NOTE: SEE 9013-1

#### **9076-1        Electronic Service**

When a pleading or other document is filed electronically, a *Notice of Electronic Filing* will be automatically generated by the CM/ECF System at the time of filing and sent electronically to the party filing the pleading or other document, as well as to all parties in the case who are registered filing users in the CM/ECF System or have otherwise consented to electronic service or notice under the Federal Rules of Bankruptcy Procedure. It is not necessary for the filing party to provide any additional service under **Fed.R.Bankr.P** 7005 with respect to parties who are filing users. Parties who are not filing users must be served by conventional means.

This rule does not eliminate the necessity of service in accordance with Fed.R.Bankr.P 7004 and/or 9014. Service of a summons and complaint filed in an adversary proceeding, a summons and involuntary petition, or a contested matter instituted pursuant to Fed.R.Bankr.P 9014 must be made pursuant to Fed.R.Bankr.P. 7004. The return of service may be filed electronically.

Certificates of service must state the manner in which service or notice was accomplished on each party so entitled, and may be filed together with the pleading or other document(s) served.